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Re: ADM 2003-22-2, Calculation of child support before spousal support.

I support this change.

The current child support formula manual provides that alimony/spousal support is deducted from the payer's income and added to the recipient's income before calculating child support. This implies that the court (or the attorneys trying to settle a case) must determine the amount of alimony first, before the child support is set, because the child support has to take the alimony into account. If a particular division of the parties' income is sought (a 60/40 split, for example), the current method requires a lot of guesswork, because the child support can only be calculated after the alimony is set, but the amount of child support must be set in accordance with the formula, leaving the final result to be something of a surprise. The court does not have the discretion to reduce the child support far below the guideline based on the amount of alimony that has been awarded.

If the court decides to set child support first under the current formula, and then decides an additional award of alimony is necessary, the child support award must be immediately revised, because any alimony awarded by the court must be deducted from the payer's income and added to the recipient's income. This will cause the child support to decrease. If the court decides that additional alimony should be awarded to make up for the decrease in child support, the additional alimony must again be subtracted from the payer's income and added to the recipient's income. Fortunately, three cycles of this recalculation are usually sufficient to bring the changes in child support down to a trivial amount.

The proposed change eliminates this problem. Under the proposal, child support is calculated first, without regard to the potential for alimony. Once the child support is set, the court can see where the parties will stand after the child support is paid, and use its sound discretion to determine whether any alimony is appropriate.

Under the proposed rule, child support will not need to be recalculated after the alimony is ordered.